IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of:	§	Group Art Unit: 2143
Nobuyoshi Morimoto	§	
	§	Examiner: England, David E.
Serial No. 09/588,879	§	
	§	Atty. Dkt. No.: 5596-00200
Filed: June 6, 2000	§	
	§	
For: System and Method for	§	
Identifying Individual Users	§	
Accessing a Web Site	§	

REQUEST FOR REHEARING UNDER 37 C.F.R. § 41.52

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir/Madam:

In response to the Decision on Appeal rendered August 26, 2010 (hereinafter Decision), Appellants present this Request for Rehearing under 37 C.F.R. § 41.52. Appellants respectfully request that the Board of Patent Appeals and Interferences consider this request in view of the following remarks.

INTRODUCTION

Independent claims 16, 19, 20, 26, 29, 30, 34, and 37 recite, in relevant part, "receiv[ing] a request from a [] computer user to access [a] web site ...." Appeal Brief, pp. 42-50. They also provide that the "request comprises ... a [] time value ...." *Id.* Hence, each of these claims recites receiving a request that includes a time value. As maintained throughout the Appeal, Appellant' position is that Shapira (U.S. Patent No. 6,925,442) discloses adding a time value to a request only upon receipt of the request by a server—*i.e.*, Shapira's request, as received by its server, does not include a time value. *See, e.g.*, Appeal Brief, pp. 15-16. The Board appears to agree that Shapira's "time value" is stored when the web site is accessed. Decision on Appeal, p. 13 ("Shapira states [that] the time stored is the time the web site is accessed."). Yet, the Board has ultimately sided with the Examiner on this issue.[1] *See id.* at 10. Appellant therefore respectfully submits that the Board's decision misapprehends or overlooks the fact that the requests from users' computers in Shapira do <u>not</u> include a time values.

Moreover, Independent claims 20, 26, and 29 also recite, in relevant part, that a "time value that reflects a time at which a computer used by the first computer user [or client computer] ... was synchronized with a global time standard." Appeal Brief, pp. 42-50. In contrast, when Shapira's "time value" is determined, the "time value" merely reflects a reference to GMT time. *See, e.g.*, Shapira, 4:43-44; 5:42-45. In its decision, the Board found that "the computer must have been synchronized to GMT (i.e., a global time standard) to obtain an offset in this time value." Decision on Appeal, p. 10. However, Appellant respectfully submits that the Board's decision misapprehends or overlooks the fact that one can make a reference to a "global time standard" without actual time synchronization. Moreover, even if a synchronization took place, the global time stored in Shapira is the time the web site is accessed (as noted by the Board at p. 13 of the Decision), not the time at which the user's computer was synchronized.

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[1] The Board has reversed the Examiner's rejections of claims 16 and 19 on other grounds. Decision on Appeal, p. 8. Thus, with respect to claims 16 and 19, Appellant respectfully submits that the arguments presented herein are additional reasons for reversal of the Examiner's rejections.

ARGUMENTS

Appellant respectfully submits that the Board's decision misapprehends or overlooks the following points.

1. Shapira's request, when received from a computer user, is not described as including a "time value."

Independent claim 20 recites, in part:

> *receiving a request from a first computer user to access the web site, wherein said request comprises* an Internet address and *a time value* corresponding to said first computer user accessing said web site, wherein the time value reflects a time at which a computer used by the first computer user to access the web site was synchronized with a global time standard ...

Appeal Brief, pp. 44-45 (emphasis added). In other words, claim 20 requires that the "request from a first computer user" when received by the "web site server," include a "time value." In other words, according to Appellant's claim, it is the request from the computer user accessing the web site that includes the time value. Appellant maintains the position that in Shapira, the requests from users accessing web sites do not include time value in those requests. *See, e.g.*, Appeal Brief, pp. 15-16. To the contrary, Shapira discloses analyzing traffic data and then encoding a "hit" or "request" with a time of access. Shapira, 1:31-40 ("Important facts about the visitors can be determined directly or inferentially by analyzing the traffic data and the context of the 'hit'.... Each hit is also encoded with the date and time of the access."). In that regard, Appellant submits that a request would not be "encoded" with a time value if, when received, the request already contained the time value. Accordingly, Appellant submits that the requests in Shapira from computer users accessing web sites do not include time values in the requests from the computer users; instead, the time values are added at Shapira's system.

In fact, Shapira's request, as the term is used in claim 20—*i.e.*, what is received from a user's computer to access a website—is nothing more than a typical HTTP "GET" command (which does **not** inherently include a time value). *See, e.g.*, Shapira, 5:4-19 ("Since the remote visitor 12 generated the request, the traffic data hit is a 'GET' command."); 5:39-50 ("the request issued by the remote visitor 12 ('GET/portal_ad.htm HTTP/1.0').""). Shapira does not describe any examples of "GET" commands that include a "time value." *See id.* According to Shapira, its "GET" command is memorialized with additional information, such as a date and time of access, but only after the command is received at a server. *See, e.g.*, Shapira, 5:39-50 ("The first web server also writes an entry in its log file memorializing the request ...."). Accordingly, Appellant submits that Shapira's requests from computer users accessing web sites do not include time values when received at Shapira's system.

Shapira's disclosure appears, at times, to refer to "hits" and "requests" (as well as memorializations of "hits" and "requests") in an inconsistent manner. *Compare* Shapira, 5:4-19 *with* 5:39-50 (referring to the same type of command first as a "hit" and then as a "request"). However, Shapira makes a clear distinction between the time and date of the request and the request itself. *See, e.g.*, Shapira, 5:42-50 ("the time and date of the request ... [and] the request issued by the remote visitor 12 ("GET/portal_ad.htm HTTP/1.0")...."). Appellant respectfully submits that Shapira makes this distinction because, as noted above, its "time and date of request" refer to the "time and date" when the request is received at the server, which is not part of its original request <u>from the computer user to access a web site</u>.

Lastly, the Board states that Shapira's "time stored is the time the web site is accessed." *See, e.g.*, Decision on Appeal, p. 13. Appellant further submits that, ordinarily, the time a website is accessed is determined when a request is received by the server. In other words, "access" happens upon receipt of the request, not upon its transmission. There is nothing in Shapira to support a conclusion that a user's computer would be able to predict or otherwise determine the eventual time of access when sending its request. There is no indication that Shapira's request from a computer user to access a

web site (*i.e.*, what is received from a user's computer to access a website) includes the time of access, or any time at all. A time of access (*i.e.*, "time value") can only be determined after receipt of a request, it follows that Shapira's request, when received by the server, does not include the time of access (*i.e.*, "time value"). Regardless, Shapira cannot be said to actually teach that the request received from a user's computer to access a website includes such a time value.

In short, Appellant respectfully submits that the Board's decision misapprehends or overlooks the fact that Shapira's "request from a computer user to access a web site" when received by a server, does not include a "time value." Instead, Shapira's system adds time values after receipt of such requests. Accordingly, Appellant respectfully requests that the Board reconsider the arguments set forth in the Appeal and Reply Briefs on this issue. Although different in various aspects, independent claims 16, 19, 26, 29, 30, 34, and 37 have similar elements for purposes of this discussion. Therefore, Appellant requests that the rejections of claims 16, 19, 20, 26, 29, 30, 34, and 37 (and their respective dependent claims) be reversed based at least on the foregoing.

2. Shapira's "time value" does not reflect a time at which the user's computer was synchronized with a global time standard.

Independent claim 20 recites, in part:

> *receiving a request from a first computer user to access the web site, wherein said request comprises* an Internet address and *a time value* corresponding to said first computer user accessing said web site, *wherein the time value reflects a time at which a computer used by the first computer user to access the web site was synchronized with a global time standard* ...

Appeal Brief, pp. 44-45 (emphasis added). Claim 20 thus requires that the "time value reflect[] a time at which a computer used by the first computer user ... was synchronized with a global time standard." When Shapira's "time value" is determined, the "time

value" merely reflects a reference to GMT time. *See, e.g.,* Shapira, 5:42-45 ("[12/Jan/1996:20:37:55 +0000], or Jan. 12, 1996, at 8:37:55 PM, Greenwich Mean Time"). Based on this passage alone, the Board found that "the computer must have been synchronized to GMT (i.e., a global time standard) to obtain an offset in this time value." Decision on Appeal, p. 10.

However, it cannot be disputed that one may make reference to GMT (or other standard) without there being actual synchronization. To help the Board understand this, consider the following portion of the specification, which provides that:

> In one embodiment, the time value is derived from a synchronized, global time standard …. When the client computer 106 user launches a web browser to gain access to a web site, an application 25 program or plug-in may be concurrently launched to synchronize the computer's or browser's real time clock with the global time standard.

Specification, p. 13. Although used here for illustration only, this passage clarifies that "synchronized" time is more than just "referenced" time.

To the extent the Board may be relying on "inherency" to show that Shapira's reference to GMT implies synchronization, Appellant submits that "[t]he fact that a certain result or characteristic <u>may</u> occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic." M.P.E.P. § 2112 citing *In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993). In fact, "[i]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic <u>necessarily</u> flows from the teachings of the applied prior art." *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). In this case, it does not "necessarily flow" from Shapira that its reference to GMT time involves some sort of synchronization. Again, one can make reference to GMT, for example, by subtracting or adding a specified number of hours from a local time, but that does not mean that the local and GMT times are in fact synchronized. There does not appear to be any support on the

record for the proposition that Shapira teaches or suggests a "time value that reflects a time at which a computer used by the first computer user … was synchronized with a global time standard."

Additionally or alternatively, as noted above, the "time value" in Shapira is a time of access. *See, e.g.,* Decision on Appeal, p. 13 ("time stored is the time the web site is accessed"). Therefore, even if the Board were to believe that Shapira performs some form of synchronization (which Appellant strongly disagrees with), Appellant submits that such synchronization would be performed by a server upon receipt of a request—*i.e.,* at the time of access. Thus, Shapira's synchronization would at most have been performed by a server, not by "a computer used by the first computer user to access the web site," as recited in the claim.

Furthermore, even if some synchronization took place at the user's computer, the time at which that synchronization occurred would not be included in a request to access a web site. As noted by the Board, the time value associated with requests in Shapira is the time of access, not the time of a prior synchronization of the user's computer with a global time standard.

Therefore, Appellant respectfully submits that the Board's decision misapprehends or overlooks the fact that Shapira's "time value" does not reflect a <u>time at which **the user's computer** was synchronized</u> with a global time standard. Accordingly, Appellant respectfully requests that the Board reconsider the arguments set forth in the Appeal and Reply Briefs on this issue. Although different in various aspects, independent claims 26 and 29 have similar elements for purposes of this discussion. Therefore, Appellant requests that the rejections of claims 20, 26, and 29 (and their respective dependent claims) be reversed based at least on the foregoing.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that the Board reconsider its Decision on Appeal for the present application and reverse the Examiner's rejections.

The Commissioner is authorized to charge any fees that may be due to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5696-00200/RCK.

Respectfully submitted,

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